

REMARKS/ARGUMENTS

Applicants appreciate the thorough examination of the present application, as evidenced by the first Official Action. The first Official Action objects to Claims 15, 37, 53, 61, 63 and 72 for including a number of informalities, and rejects Claims 20, 22, 42, 44, 77, 79, 99 and 101 under 35 U.S.C. § 112, second paragraph, for being indefinite. The Official Action then rejects all of the pending claims, namely Claims 1-101, under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 7,257,386 to McDonnell et al., in view of U.S. Patent Application Publication No. 2002/0194205 to Brown et al., alone or further in view of one of U.S. Patent Application Publication No. 2003/0120802 to Kohno, U.S. Patent Application Publication No. 2004/0198426 to Squibbs et al., U.S. Patent Application Publication No. 2007/0005809 to Kobayashi, or U.S. Patent Application Publication No. 2003/0084128 to Anderson. As explained below, however, Applicants respectfully submit that the claims are definite and that the claimed invention is patentably distinct from McDonnell, Brown, Kohno, Squibbs, Kobayashi and Anderson, taken individually or in any proper combination. Nonetheless, Applicants have amended various ones of the claims to further clarify the claimed invention, including amending the aforementioned claims to remedy the noted informalities. In view of the amendments to the claims and the remarks presented herein, Applicants request reconsideration and allowance of all of the pending claims of the present application.

A. Claims 20, 22, 42, 44, 77, 79, 99 and 101 are Definite

Dependent Claim 20 (and similarly Claims 22, 42, 44, 77, 79, 99 and 101) recite a sender being configured to upload a remaining portion of content based upon a bit range of the remaining portion of content. The first Official Action rejects Claims 20, 22, 42, 44, 77, 79, 99 and 101 for being indefinite; the Official Action alleging that the term “bit range” does not define the remaining portion of content. Applicants respectfully disagree, however, and note that a bit range may and as claimed does in fact define a remaining portion of content. As explained in the specification:

... For example, in uploading the remaining portion of the content, the sender can include header information specifying only the remaining portion of the content, such as a “range” header specifying a bit range of the remaining

portion of the content (i.e., the size of the remaining portion of the content). In this regard, whereas such a range header may otherwise instruct the upload agent to perform an overwrite operation on that portion of the upload content stored in content storage 116 and within the specified range, the specified range can comprise a range just beyond the portion of the upload content stored in content storage of the recipient. For example, presume that the size of the portion of the stored in content storage of the recipient is "X." In such an instance, the range header can specify a range of "X+1" through the last bit of the upload content.

Pat Appl., page 41, line 26 – page 42, line 5.

The specification therefore clearly discloses that the length or size of upload content may be reflected in bits, including a first bit, a last bit and in the context of a received portion and a remaining portion of the content, the last bit of the received portion (described in the specification as bit "X"). In this regard, the received portion of the content may be reflected in the bit range 1 through X, i.e., 1 – X; and the remaining portion of the content may be reflected in the bit range X+1 through the last bit, i.e., (X+1) – Last Bit. And accordingly, Applicants respectfully submit that, as claimed, a bit range does define the remaining portion of the content.

For at least the foregoing reasons, Applicants respectfully submit that the rejection of Claims 20, 22, 42, 44, 77, 79, 99 and 101 as being indefinite is overcome.

B. Claims 1-8, 12, 13, 23-30, 34, 35, 45-48, 51, 52, 58-65, 69, 70, 80-87, 91 and 92 are Patentable

The Official Action rejects Claims 1-8, 12, 13, 23-30, 34, 35, 45-48, 51, 52, 58-65, 69, 70, 80-87, 91 and 92 as being unpatentable over McDonnell, in view of Brown. According to one aspect of the claimed invention, as reflected by amended independent Claim 1, a system is provided that includes a sender and a network entity. As recited, the sender is configured to send an upload request including a request to upload content from the sender to a recipient. The network entity is configured to receive the upload request, and in response thereto, determine an upload schedule relating to at least one of the time or manner of uploading the content. The sender, in turn, is configured to upload the content to the recipient in accordance with the upload schedule.

In contrast to amended independent Claim 1, neither McDonnell nor Brown, taken individually or in any proper combination, teach or suggest a sender requesting to upload content to a network entity, and receiving from that network entity, a schedule for that upload. The Official Action alleges that McDonnell discloses a sender requesting to upload content to a network entity, but concedes that McDonnell does not teach or suggest receiving, from the network entity, a schedule for that upload. For this feature, the Official Action cites Brown, and alleges that one skilled in the art would have been motivated to modify McDonnell per Brown “in order to efficiently upload content due to bandwidth, time, file size, and various criteria.” Official Action of Dec. 27, 2007, page 4. Applicants respectfully disagree.

Briefly, Brown discloses a system and method for synchronizing files across a number of distributed clients in which those clients synchronize with each other by synchronizing to a common server in a manner whereby the clients may upload or download content to or from the common server. As disclosed (and, incidentally, cited in the Official Action), “the client SA [Synchronization Application] initiates synchronization” Brown, paragraph [0028]. Thus, instead of the entity conducting the upload (client) requesting and receiving an upload schedule from the recipient of the upload (server), similar to amended independent Claim 1, Brown clearly discloses that the entity conducting the upload itself determines the upload schedule. In fact, Brown discloses that its architecture is designed to minimize load on the server, and as a consequence, the architecture offloads “as many processor-intensive operations as possible,” including the synchronization itself, to the client. *Id.* at paragraph [0026].

Applicants therefore respectfully submit that neither McDonnell or Brown, taken individually or in any proper combination, teach or suggest a sender requesting to upload content to a network entity, and receiving from that network entity, a schedule for that upload, as recited by amended independent Claim 1. As such, Applicants respectfully submit that amended independent Claim 1, and by dependency Claims 2-22, is patentably distinct from McDonnell and Brown, taken individually or in any proper combination. Applicants also respectfully submit that amended independent Claims 23, 45, 58 and 80, recite subject matter similar to that of amended independent Claim 1, including a sender requesting to upload content to a network entity, and receiving from that network entity, a schedule for that upload. As such, Applicants

respectfully submit that amended independent Claims 23, 45, 58 and 80, and by dependency Claims 24-44, 46-57, 59-79 and 81-101, are also patentably distinct from McDonnell and Brown, taken individually or in any proper combination, for at least the reasons given above with respect to amended independent Claim 1.

For at least the foregoing reasons, Applicants respectfully submit that the rejection of Claims 1-8, 12, 13, 23-30, 34, 35, 45-48, 51, 52, 58-65, 69, 70, 80-87, 91 and 92 as being unpatentable over McDonnell, in view of Brown is overcome.

C. Claims 9, 11, 15-20, 31, 33, 37-42, 50, 53-57, 66, 68, 72-77, 88, 90 and 94-99 are Patentable

The Official Action rejects Claims 9, 11, 15-20, 31, 33, 37-42, 50, 53-57, 66, 68, 72-77, 88, 90 and 94-99 as being unpatentable over McDonnell, in view of Brown, and further in view of Kohno. As explained above, amended independent Claims 1, 23, 45, 58 and 80, and by dependency Claims 2-22, 24-44, 46-57, 59-79 and 81-101, are patentably distinct from McDonnell and Brown, taken individually or in any proper combination. Applicants respectfully submit that Kohno does not cure the deficiencies of McDonnell and Brown. That is, even considering Kohno, none of McDonnell, Brown or Kohno, taken individually or in any proper combination, teach or suggest the aforementioned sender requesting to upload content to a network entity, and receiving from that network entity, a schedule for that upload, as per amended independent Claims 1, 23, 45, 58 and 80. Applicants therefore respectfully submit that amended independent Claims 1, 23, 45, 58 and 80, and by dependency Claims 2-22, 24-44, 46-57, 59-79 and 81-101, are patentably distinct from McDonnell, Brown and Kohno, taken individually or in any proper combination.

For at least the foregoing reasons, Applicants submit that the rejection of Claims 9, 11, 15-20, 31, 33, 37-42, 50, 53-57, 66, 68, 72-77, 88, 90 and 94-99 as being unpatentable over McDonnell, in view of Brown, and further in view of Kohno is overcome.

D. Claims 10, 32, 49, 67 and 89 are Patentable

The Official Action rejects Claims 10, 32, 49, 67 and 89 as being unpatentable over

McDonnell, in view of Brown, and further in view of Squibbs. As explained above, amended independent Claims 1, 23, 45, 58 and 80, and by dependency Claims 2-22, 24-44, 46-57, 59-79 and 81-101, are patentably distinct from McDonnell and Brown, taken individually or in any proper combination. Applicants respectfully submit that Squibbs does not cure the deficiencies of McDonnell and Brown. That is, even considering Squibbs, none of McDonnell, Brown or Squibbs, taken individually or in any proper combination, teach or suggest the aforementioned sender requesting to upload content to a network entity, and receiving from that network entity, a schedule for that upload, as per amended independent Claims 1, 23, 45, 58 and 80. Applicants therefore respectfully submit that amended independent Claims 1, 23, 45, 58 and 80, and by dependency Claims 2-22, 24-44, 46-57, 59-79 and 81-101, are patentably distinct from McDonnell, Brown and Squibbs, taken individually or in any proper combination.

For at least the foregoing reasons, Applicants submit that the rejection of Claims 10, 32, 49, 67 and 89 as being unpatentable over McDonnell, in view of Brown, and further in view of Squibbs is overcome.

E. Claims 14, 36, 71 and 93 are Patentable

The Official Action rejects Claims 14, 36, 71 and 93 as being unpatentable over McDonnell, in view of Brown, and further in view of Kobayashi. Applicants respectfully submit, however, that Kobayashi does not qualify as prior art to support a rejection of the claimed invention. In this regard, Kobayashi published on January 4, 2007, after the filing date of the present application (i.e., March 18, 2004); and therefore, Kobayashi does not qualify as prior art to the claimed invention under 35 U.S.C. §§ 102(a) or (b). Kobayashi does claim priority to a PCT patent application filed before the filing date of the present application (i.e., September 13, 2002). But as that PCT patent application was not published in the English language, Kobayashi also does not qualify as prior art to the claimed invention under 35 U.S.C. §§ 102(e). And as Kobayashi does not qualify as prior art under §§ 102(a), (b) or (e), and as none of the other subsections of § 102 apply, Applicants respectfully submit that Kobayashi cannot properly be cited in support of an

anticipation rejection of the claimed invention under 35 U.S.C. § 102, and accordingly, in support of an obviousness rejection of the claimed invention under 35 U.S.C. § 103.

As Kobayashi is disqualified as prior art to support a rejection of the claimed invention under 35 U.S.C. § 103, Applicants respectfully submit that the rejection of Claims 14, 36, 71 and 93 under 35 U.S.C. § 103(a) as being unpatentable over McDonnell, in view of Brown, and further in view of Kobayashi is overcome.

F. Claims 21, 22, 43, 44, 78, 79, 100 and 101 are Patentable

The Official Action rejects Claims 21, 22, 43, 44, 78, 79, 100 and 101 as being unpatentable over McDonnell, in view of Brown, and further in view of Anderson. As explained above, amended independent Claims 1, 23, 45, 58 and 80, and by dependency Claims 2-22, 24-44, 46-57, 59-79 and 81-101, are patentably distinct from McDonnell and Brown, taken individually or in any proper combination. Applicants respectfully submit that Anderson does not cure the deficiencies of McDonnell and Brown. That is, even considering Anderson, none of McDonnell, Brown or Anderson, taken individually or in any proper combination, teach or suggest the aforementioned sender requesting to upload content to a network entity, and receiving from that network entity, a schedule for that upload, as per amended independent Claims 1, 23, 45, 58 and 80. Applicants therefore respectfully submit that amended independent Claims 1, 23, 45, 58 and 80, and by dependency Claims 2-22, 24-44, 46-57, 59-79 and 81-101, are patentably distinct from McDonnell, Brown and Anderson, taken individually or in any proper combination.

For at least the foregoing reasons, Applicants submit that the rejection of Claims 21, 22, 43, 44, 78, 79, 100 and 101 as being unpatentable over McDonnell, in view of Brown, and further in view of Anderson is overcome.

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CONCLUSION

In view of the amendments to the claims and the remarks presented herein, Applicants respectfully submit that the present application is in condition for allowance. As such, the issuance of a Notice of Allowance is therefore respectfully requested. In order to expedite the examination of the present application, the Examiner is encouraged to contact Applicants' undersigned attorney in order to resolve any remaining issues.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



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